

TESTIMONY
of
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Before the

COMMERCE, TRADE AND CONSUMER PROTECTION SUBCOMMITTEE
of the
HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON
“LEGISLATION TO IMPROVE CONSUMER PRODUCT
SAFETY FOR CHILDREN
H.R. 2474, H.R. 1699, H.R.814,
AND H.R. 1721”

JUNE 6, 2007

Good morning, Chairman Rush, Ranking Member Stearns, and other members of the Subcommittee. My name is Sally Greenberg, Senior Product Safety Counsel for Consumers Union (CU), non-profit publisher of *Consumer Reports*®.¹ Thank you for providing me with the opportunity to come before you today to provide Consumers Union's views on four bills that are aimed at improving the safety of consumer products in this country.

For the past 71 years, Consumers Union (CU) has been testing and reporting on products and services in order to arm consumers with the information they need to protect themselves in the marketplace. CU's mission is to work for a fair, just and safe marketplace for all consumers. CU applauds the Subcommittee for holding this important hearing.

H.R. 2474, to Provide For an Increased Maximum Civil Penalty for Violations Under the Consumer Product Safety Act

Consumers Union supports H.R. 2474, a bill to raise the maximum penalty for violations under the Consumer Product Safety Act (CPSA) and applauds Congressman Rush (D-IL) for proposing this important bill. The Consumer Product Safety Commission (CPSC) is currently empowered to impose fines on companies for failing to report product safety hazards. However, Congress has capped the fines at \$1.85 million. Congressman Rush's bill would raise that cap to \$20 million.

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This increase in potential fines would be, we believe, a strong deterrent for any company that might otherwise be inclined to flout the law. For some companies, the current cap on fines is so low that the threat of the fine will not make a dent in the company's bottom line. The \$750,000 fine that CPSC assessed on Wal-Mart several years ago for failing to report safety hazards with fitness machines cost the company the equivalent of sales rung up in only 1 minute and 33 seconds.

In 2002, Commissioner Thomas Moore, when he was Acting Chairman of the CPSC, supported lifting the cap on fines for failure to report a product safety hazard. He said at the time, "Perhaps some companies would be less likely to try to stall our agency by putting off reporting hazardous products if we had penalties that were more commensurate with the harm they can cause."

Several recent examples of fines imposed by the CPSC suggest that companies continue to flout the reporting requirements under 15(b) of the Consumer Product Safety Act.

Earlier this year, the CPSC levied over \$1 million in civil penalties against two firms for failing to report product safety hazards. On January 12, 2007, the Hoover Company Inc. agreed to pay a civil penalty of \$750,000 to settle allegations that it failed to report the sale of vacuum cleaners with defective on-off switches that can overheat. In April 2005, Hoover recalled 636,000 of its vacuum cleaners because of defective on-off switches. CPSC learned in July 2004 that Hoover had notice of 260 consumer incidents, of which 141 involved reports of fire, and determined that Hoover first learned that a vacuum cleaner switch on one of these units overheated and melted in April 1999.

Also in January, 2007, Nexgrill Industries Inc. agreed to pay \$300,000 after failing to report a hazard with its gas grills. Between April 2004 and October 2005, Nexgrill received 20 reports of gas grill fires, including three reports of minor burn injuries. CPSC argued that Nexgrill failed to report the defect to the Commission for at least 10 months, even after it had sufficient information that the gas grills contained a defect.

In July 2006, Tiffany and Company was assessed a \$262,500 civil penalty for failing to report a hazard with its infant teether rattles. Tiffany received at least three reports of defective solder joints in the teethers between November 2003 and February 2004. CPSC noted that the firm failed to notify consumers who had purchased the teether and did not report the problem to CPSC until after the Commission had opened its own investigation and requested that Tiffany do so.

In 2004, Sears, Roebuck and Company was fined \$500,000 in civil penalties in each of two separate settlement agreements with the Consumer Product Safety Commission involving riding mowers. Five years earlier, CPSC had notified Sears of two consumer reports alleging fuel tank leaks on the riding mowers. In both instances, the CPSC advised Sears that the consumer complaints may trigger the agency's reporting requirements under Section 15(b) of the Consumer Product Safety Act (Reference File, 21:0101). Sears never reported the information to the CPSC despite receiving approximately 1,600 reports of fuel leakage and fuel tank cracking associated with the rear-engine riding lawnmowers, triggering the fines.

Children's product manufacturers have been fined in the past on numerous occasions for failing to report product safety hazards, including: \$225,000 in 1996 against JBI playground equipment makers, \$725,000 in 1996 against COSCO for toddler beds and rails that caused strangulation, \$150,000 in 1998 against Binky Griptight pacifiers for a strangulation hazard, \$225,000 against Century Products cribs and strollers for a suffocation hazard, \$400,000 against Hasbro infant carriers in 2000 for skull fracture and other infant hazards, \$200,000 in 2000 against Baby's Dream cribs for fingertip amputation hazards.²

While ideally manufacturers let their customers and the CPSC know the moment they hear about a safety problem with one of their products, as the examples herein demonstrate, too often that is not the case. As a result, the CPSC must be able to

² See *It's No Accident*, Marla Felcher, Common Courage Press, 2001.

impose a fine large enough to deter companies from failing to report product safety hazards as required under the CPSC statute. For the foregoing reasons, CU supports raising the fines as called for by H.R. 2474.

H.R. 1699, The Danny Keysar Child Product Safety Notification Act

Consumers Union strongly supports H.R. 1699, The Danny Keysar Child Product Safety Notification Act, a bill that calls upon the CPSC to set standards for consumer registration of durable baby products. Registering products with manufacturers will allow consumers to be more easily contacted in the event of a safety recall. We applaud Congresswoman Jan Schakowsky's (D-IL) and Congressman Fred Upton (R-MI) for their leadership in introducing this important bill.

According to the July 28, 2006 *CPSC Nursery Product-Related Injuries and Deaths to Children under age 5* Annual Memorandum, an estimated 59,800 children under age five were treated in hospital emergency rooms for injuries associated with nursery products in 2005. According to the report, an average of 61 children die annually in such incidents. We believe the number of injuries and deaths from using such products is disturbing. Most of these injuries and deaths are preventable. Moreover, when a product poses a substantial safety hazard, it must be recalled. Unfortunately, the recall system that exists today for getting hazardous products out of the marketplace and out of the homes of consumers is woefully lacking.

An ineffective recall system poses the most serious problems for children's products, which represent a large proportion of the products recalled each year. A recent report³ released by the Chicago advocacy group, Kids in Danger, shows that 111 of the 318 products recalled by the CPSC in 2006 were children's products, representing 35% of all product recalls. And of those 111 products recalled, about a third exposed children to risk of bodily injury – falling, laceration and impact injuries. Indeed, these recalled products caused 177 injuries and six deaths in 2006.

³ "Unexpected Danger: Children's Product Recalls in 2006," Kids in Danger, March 2007. www.kidsindanger.org

There is a longstanding pattern of children's products representing a substantial proportion of all recalled products. In the years from 2001 to 2006, children's product recalls have ranged from one-third to one-half of all products recalled, with a high of 55% in 2001 to a low of 31% in both 2003 and 2004. In 2006 alone, nearly 19 million children's product units were recalled.

The term "recalled product" suggests that a product has been successfully returned, repaired or replaced: in fact, that is rarely the case. Most products that are recalled remain in the marketplace and in consumers' homes, threatening the safety of those consumers who use them. Estimates on successful rates of recall for the average product fall somewhere between 10-30%, though it's difficult to find accurate information from the CPSC on this issue.

Marla Felcher, in her book *"It's No Accident – How Corporations Sell Dangerous Baby Products,"*⁴ quotes a CPSC study estimating that manufacturers cannot account for 70-90% of sold infant products after they have been recalled.

When one-third to one-half of all recalled products are children's products, and with recall rates typically hovering around 10-30%, it's clear that a large number of potentially harmful products are putting children at risk. Indeed, 17 month old Danny Keysar, for whom this legislation is named, died when his Playskool Travel Lite portable crib collapsed on his neck. That crib had been recalled, but neither Danny's day care center nor Danny's parents had been informed of the recall. This crib model killed 5 other children besides Danny.

Currently, once a product is recalled, the CPSC and the manufacturer draft the recall notice and send it out over the wires. Unfortunately, this vital information often does not reach the very people who most need it. There is no law requiring manufacturers to try to find purchasers of the product or to notify parents or day care centers if a product

⁴ Common Courage Press, 2001.

proves dangerous and must be recalled. Further, there is no requirement that manufacturers advertise a product recall in the same way they advertised the product. Moreover, high chairs, cribs, strollers, infant swings and carriers often continue to be used for months or years after they have been recalled.

That is why H.R. 1699 is so important. While it is not likely to create a perfect system of product registration, such registration cards have been shown to be effective in increasing the contact information manufacturers have on file in the event they must issue a safety recall. Toro Corporation, for example, provided data to the CPSC showing that the return rate for its postage paid cards presently included with mowers sold at Toro dealerships is 75-80 percent. That shrinks to 35-40 percent for mowers sold through mass retailer outlets. The return rates for the non-postage paid card is 10-20 percent.

Further, since March 1993, by federal regulation, car seat manufacturers are required to provide a simple product registration card of the kind specified in H.R. 1699.⁵ This legislation is clear- the card is not to be a warranty or marketing card of the sort that many consumers have come to ignore because such cards ask intrusive questions and appear to be created solely for marketing purposes. H.R. 1699 also calls for registration cards to include an explanation of their narrow safety purpose – to facilitate notification of consumers in the event of a recall.

In a 2003 National Highway Traffic Safety Administration survey, the agency found that almost three-quarters (73%) of parents/caregivers who said they obtained a new car seat new also said that a registration card came with the seat. Of these, 53% said they mailed back the card.⁶ According to NHTSA , the average completion rate for recalls of child restraints went from 25% to 50% after the child restraint registration system went into effect.

⁵ 49 CFR Parts 571 and 588, Docket No. 74-09, Fed.Reg. September 10, 1992).

⁶ Motor Vehicle Occupant Safety Survey,
<http://www.nhtsa.dot.gov/people/injury/research/2003MVOSSVol5/pages/ExecSumm.htm>

Members of the Subcommittee might be interested to know that in 2001 consumer groups submitted a petition to the CPSC ⁷ asking for a standard that would require registration cards on products for children. The petition called for many of same requirements that are set out in H.R. 1699, including ensuring that the card is postage paid and calling for straightforward consumer contact information and assurances that the information will only be used in the event of a recall, so the cards don't become a sales or marketing vehicle.⁸ In a 2-1 vote, the Commission denied the petition on April 28, 2003, despite evidence that such cards have improved registration of car seats substantially.

There are attendant hurdles associated with consumer access to information about recalled products. For example, once a product is recalled by the CPSC, the Commission, for reasons that escape us, will not release information on the number of units that have been successfully recalled so that the public can accurately estimate how many remain at large, the extent of the remaining risk, or whether the recall outreach used for a particular product was effective. We would recommend that the Committee work with the CPSC to close this information gap.

H.R. 814, Children's Gasoline Burn Prevention Act

CU supports H.R. 814, Children's Gasoline Burn Prevention Act, to give the CPSC the authority to require child resistant closures on gasoline containers. We applaud Congressmen Moore (D-KS) and Bachus (R-AL) for introducing the legislation. Currently, the CPSC isn't empowered to regulate gas cans because these containers aren't sold with gasoline inside. This bill will correct that problem, allowing the CPSC to require child-resistant packaging on gasoline containers, as they already do with other dangerous containers like household cleaners under the Poison Prevention Act.

⁷ **Federal Register** , Vol. 66, No. 148, Wednesday, August 1, 2001

⁸ Id.

Congressman Moore introduced his bill after a four year old boy in Kansas died, and his three-year-old brother was permanently scarred, when the children opened and spilled the contents of a gas can, causing the gasoline vapors to be ignited by a hot water heater.

Gasoline is dangerous because it is highly volatile—the fumes are capable of ignition up to 12 feet away from a pooled source. The inherent danger is further multiplied by its explosive potential. When ignited, gasoline vapors form a fireball with 10 times the heat released in the liquid.⁹

CPSC staff reviewed 209 children's clothing burn injury reports received from March 2003 through June 2004 and found that more than one-half involved gasoline or other flammable liquids.¹⁰

Our analysis of CPSC incident data shows that about 3 children under age 5 die and more than 2000 are treated in hospital emergency rooms each year from incidents involving gasoline. Data show that while about 27 percent of the injuries involving gasoline are from thermal burns, a majority of incidents are from poisoning and chemical burns. A requirement for effective child-resistant closures will protect against all these hazards to young children.

We strongly support H.R. 814 and believe that the standard referenced in the H.R. 814, ASTM F2517-05 ("Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use") is good. We want members of the Subcommittee to be aware that the standard itself will likely allow up to 20% of children to defeat the child resistance closure. If the standard is made stronger, it may reduce the general public's ability to use the gas cans.

Finally, we believe this bill could be strengthened by expanding its scope to cover portable kerosene containers that also lack a requirement for child-resistant closures.

⁹ **Childhood Burn Injuries Related to Gasoline Can Home Storage**, *Pediatrics*, 1997, 99.3.e3, Christopher S. Kennedy and Jane F. Knapp.

¹⁰ <http://www.cpsc.gov/CPSPUB/PREREL/prhtml05/05028.html>

Although the incident rate for kerosene containers is a fraction of those for gasoline containers, the hazards are the same.

H.R. 1721 – Pool and Spa Safety Act

CU supports Rep. Wasserman Shultz's (D-FL) proposal to increase the safety of swimming pools and spas. Pools and spas present the greatest home safety hazard to children, each year claiming about 260 lives of children under 5. Another 2,725 young children are treated annually in hospital emergency rooms for submersion injuries – mostly in residential pools. These deaths and injuries are tragic, yet preventable. As a result, CU believes that a comprehensive approach will provide multiple layers of protection and is the most effective way of reducing spa and pool drowning incidents.

We strongly support Section 3 of H.R. 1721, which calls on CPSC to adopt an entrapment protection standard for all swimming pools or spa drains within one year of the bill's enactment. Consumers Union regrets that such a standard was never made mandatory by the CPSC, and is terribly saddened by the tragic drownings of the two children mentioned in the bill, 7 year-old Virginia Graeme Baker and 5 year-old Preston de Ibern because of a poorly designed drain.

We support the bill's proposed grant program to encourage states to improve their pool and spa safety laws and provide safety education programs. To be effective, the \$5 million annual grant, to be administered by the CPSC, must not a part of the CPSC's inadequate \$63.5 million annual budget. We recommend that this grant money be prioritized based on drowning incident rates per state, and should be used to fund new programs, not subsidize existing ones. We also think that a \$5 million annual grant for each of the next five years is not enough to both encourage states to improve pool and spa safety laws, and also to develop effective drowning prevention campaigns.

We are also concerned that this bill does not adequately address many of the safety issues involving above-ground pools, particularly inflatable pools, which groups like

ASTM have identified as an emerging hazard. Unsafe design and the lack of safety standards make inflatable and other types of above ground pools particularly hazardous. The result is rapidly escalating drowning incidents as these low-cost pools become more popular in the consumer marketplace.¹¹

Of the various layers of protection required to increase the safety of pools and spas, we believe that adequate fencing is the most important. However, since the CPSC does not likely have enforcement authority over fence installation, any grant program should focus on encouraging States, as their first priority, to require by law adequate fencing around pools and spas.

We also believe that making safety devices such as pool alarms a mandatory part of a pool's design is well within the authority of the CPSC. Two states, New York and Connecticut, have laws requiring alarms for all new pools. We think there should be a federal requirement for all pools to incorporate intrusion alarm systems.

Having endorsed pool alarms, however, we hasten to add that not all pool alarms work effectively. When CU tested six popular alarms for publication in *Consumer Reports* magazine (June 2006, p 7.), we found that only two met the voluntary industry standard (ASTM F2208). Three models failed to alarm within the required time and, as a result, could provide a false sense of security. Another model had such a serious problem with false alarms that an owner might be prompted to shut the device off.

Indeed, CU found that the pool alarms that failed our tests did not comply with the industry safety standard, so CU petitioned the CPSC in 2006 to make the ASTM standard mandatory for all pool alarms sold. In response to our petition, a CPSC official informed us that the Commission is working with ASTM to upgrade the standard. However, while upgrading the standard may be useful, the problem lies with widespread

¹¹ Based on CU's analysis of CPSC data, the number of drowning incidents in portable pools has been rapidly escalating at an average rate of about 50 percent per year since 2000. CPSC data indicate 4 drownings in 2000 in portable pools; by 2005, this number had grown to 29.

noncompliance with the standard, a problem CPSC has yet to address, either in response to our petition or on its own.

CU shares the goals H.R. 1721 and believes that pools and spas can be made inherently safer through better design and incorporation of safety devices. We support the proposed grant program and educational campaigns provided adequate funding is made available to make these programs effective.

Conclusion

Consumers Union supports all four of the bills before the Subcommittee this morning. We believe that if a product proves hazardous and can be made safer for a reasonable cost and the utility of the product preserved, we should take the steps to make that product safer. The bills you are considering this morning embody that basic principle. We look forward to working with Subcommittee members in the coming months on these and other important product safety initiatives.

SAFETY ALERT

THREE POOL ALARMS 'NOT ACCEPTABLE'

On average, more than 300 children under the age of 15 drown in swimming pools every year, according to federal data. Pool alarms are designed to raise an alert if people enter the water when they're not supposed to. But in our tests, only two of seven alarms worked well. Three were rated Not Acceptable.

How alarms work. Most use sensors to detect motion in the water. Some float; others attach to the pool's side. Some work with both in- and above-ground pools; others with one type. Under ASTM International's voluntary standards, an 85-plus-decibel alarm must sound pool-side and in the house within 20 seconds when an 18-pound mannequin falls into the pool, and there must be no false alarms in a 15-mph wind or when a basketball plops into the pool.

CR's take. Choose one of the two Poolguards. The Pool S.O.S., PoolEye PE21, and Pool Patrol were Not Acceptable: They failed to sound an alarm

within 20 seconds. The PoolEye PE13 isn't recommended because it sounded many false alarms. We also tested the Safety Turtle Standard System, a wrist sensor that sends an alarm when submerged, but it works only on the child wearing it and needs an additional receiver to sound off at both pool and house. Even effective alarms are no substitute for fencing a pool and latching doors and gates, says Julie Gilchrist, M.D., an epidemiologist at the federal Centers for Disease Control and Prevention.

Quick Ratings Pool alarms

Within groups, in price order.

Brand & model	Type	Price	Meets standard?	Comments
Poolguard PGRM-AG	Above-ground	\$140	Yes	Alarmed within 20 seconds.
Poolguard PGRM-2	In-ground	225	Yes	Alarmed within 20 seconds.
NOT RECOMMENDED				
PoolEye PE13	Above-ground	110	No	Alarmed within 20 seconds; prone to false alarms.
NOT ACCEPTABLE				
Pool S.O.S. PA-100	In- or above-ground	80	No	Failed to alarm within 20 seconds.
PoolEye PE21	In-ground	150	No	Failed to alarm within 20 seconds.
Pool Patrol PA-30	In- or above-ground	200	No	Failed to alarm within 20 seconds.



THIS ONE WORKED Our tests showed that the Poolguard PGRM-AG would sound an alarm if a small child fell in.

NOW HEAR THIS: GOOD HEADSETS FOR BLUETOOTH CELL PHONES

Bluetooth, the technology that lets you use a cell phone with a wireless headset, is coming on strong. More Bluetooth phones are available, at prices that start around \$130. Bluetooth headsets cost as little as \$30, and many are smaller than ever. They eliminate fumbling for a ringing phone and are more convenient than a wired headset. When paired with a cell phone that has voice activation (virtually all Bluetooth models do), the devices can make or take calls, even if the phone is up to about 30 feet away. (They beep or vibrate when you're called.) Here's how to choose a Bluetooth headset, plus good choices from recent tests:

Compactness costs. A small, sleek headset can cost more than \$150 and will probably have a smaller battery and thus less talk time per charge.

Setup takes time. Bluetooth phones and headsets must be electronically introduced, in a sometimes tricky procedure called pairing. Some models have a button to simplify the process. Most Bluetooth devices are monogamous. If you buy a second Bluetooth headset or want to connect with other Bluetooth devices—a printer, a PDA—your phone has to sever ties with the old headset before pairing with the new partner.

Charging differs. All models come with wall

chargers; a car charger is typically \$10 to \$30. Some come with a USB cable for recharging via a computer's USB port. Talk time per charge varies from about four to nine hours.

Try several headsets. Make sure buttons are easy to reach and to identify by touch. Some headsets can mute or hold a call. Look for an audible low-battery warning. Small headsets won't wiggle on your ear as larger ones can.

Assess voice commands. Most Bluetooth phones will voice-dial once you teach them that "Mom," let's say, is a certain number. The most sophisticated let you dial any number by speaking it into the headset, and instantly summon voice-mail and other common applications.

CR's take. There are several good choices. The Jabra BT350, \$80, provides nine hours of talk time on a charge, but it may wiggle. The Jabra BT500, \$120, is stable, hangs comfortably behind the ear, and has a pairing button for simple setup. Talk time is eight hours per charge. The Jabra JX10, \$180, and Motorola H700, \$120, are small, light, and stable, but their talk time is only about half as long. The Jabra has a pairing button. The Motorola has a low-battery alarm; the Jabras don't, but they do have a USB charging cable.



Jabra BT500



Jabra JX10

JABRA JABBER The BT500 sits behind your ear and gives eight hours of talk time per charge. The JX10 is sleeker but allows half the time.